



Northern
California



December 2, 2025

Via Electronic Mail

Diane Nayares-Perez
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RE: Concerns About Proposed Revisions to Modesto City Ordinance 4-23.02

Dear City Clerk and Councilmembers:

The American Civil Liberties Union of Northern California (“ACLU”) and the First Amendment Coalition (“FAC”) write concerning proposed revisions to Municipal Code Title 4, Chapter 23, Restrictions on Use of Specified Items During Public Assemblies (“the Ordinance”) scheduled to be heard at the December 2 City Council Meeting. Because we received news of the proposed changes on Friday afternoon of the Thanksgiving holiday break, when our offices were closed, we have had just one full business day to review the proposed revisions. Our comments here are thus preliminary and not complete.

To be blunt: the proposed revisions make the ordinance more unconstitutional, not less. The revisions do nothing to address certain key ambiguities in the Ordinance and instead lead to absurd results due to the revision’s differential treatment of speech based on content. They also leave other members of the public, and especially journalists, vulnerable to safety concerns, thereby posing a threat to constitutional freedoms and safe newsgathering. Moreover, in attempting to justify the Ordinance’s ban on masks, the City misconstrues the right to engage in anonymous speech while protesting, the public’s legitimate concerns about government surveillance and doxxing, and the historical record of protests in Modesto.

Ambiguity and Absurd Results. In our prior letters, the ACLU and FAC explained aspects of why the Ordinance is troublingly vague, and why such ambiguity can lead to both a chilling impact on free speech as well as a pattern of disparate and discriminatory enforcement. These concerns remain and are even amplified in light of the proposed revisions. The revisions create content-based categories of speech, where some expressive acts are treated differently than other expressive acts—a condition that the First Amendment abhors. (*See Police Dep’t of Chicago v. Mosley* (1972) 408 U.S. 92, 95-96.) This differential treatment leads to absurd results. For example, the revisions permit a protester to wear a “costume” that obscures their entire face. But

if that same protester showed up wearing just a bandana covering only half their face, they would be subject to a misdemeanor punishable up to six months in jail. Similarly, it would be permissible for a protester to show up in a “softshell bicycle/sports helmet” (whatever that may be), but it would be a criminal misdemeanor for that same person to show up in a “hardshell” bicycle helmet or sports helmet (whatever those may be). And to offer one more example, it is unclear how the revisions would apply to a person who wished to wear a keffiyeh scarf around their face to express a message of support for Palestine—is this an “expressive function of a costume” or a violation of the Ordinance?

Safety Concerns for Members of the Public and Journalists. Concerns about the overbreadth and vagueness of the Ordinance as revised are acute given what both we and you acknowledge: protests can be chaotic. This is especially true for journalists, who—in California—have a statutory right under Penal Code section 409.7 to be present in public areas following police dispersal orders. Reporters, photographers, and other media workers do vitally important work of keeping communities informed about protests and any law enforcement response. It is vital that they be free from arrest for the mere act of using industry-standard personal protective gear while they perform their constitutionally protected duties.¹ And yet the proposed revisions make no allowance for this concern. Nor do the revisions take into account what we previously pointed out and which federal courts readily recognize: often it is law enforcement who engage in a pattern and practice of excessive force when policing protests. (*See, e.g., Los Angeles Press Club v. City of Los Angeles*, Case No. 2:25-CV-05423-HDV-E (C.D. Cal. Sept. 10, 2025) 2025 WL 2640421, at *1-5; *Chicago Headline Club v. Noem*, Case No. 25-CV-12173 (Nov. 20, 2025) 2025 WL 3240782, at *86.)

Anonymous Speech and Fears of Both Government Surveillance and Doxxing. As set forth in our letters, protesters have the right to engage anonymously in peaceful lawful assembly and expressive acts. The legislative findings fundamentally misunderstand how this right applies. The City points to the willingness of some advocates to appear unmasked at council meetings opposing the Ordinance as evidence that those advocates have forfeited their right to anonymity when protesting. Not so. The right applies with much more granularity. It operates to shield a person who is peacefully protesting from consequence depending on the nature of the protest and speech involved. (*See Talley v. California* (1960) 362 U.S. 60, 64 [“Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not all.”].) The City’s brush-off also misreads the current political moment. The ubiquity of government surveillance cameras and personal phones with recording devices and cameras actually bolsters why one would want to remain anonymous for fear of government retaliation or even doxxing and harassment by private actors. In fact, it is difficult to overstate how real this fear might be for families with mixed immigration status who might want to protest against the current administration’s immigration actions but are afraid to do so unmasked given the risks to themselves or their loved ones.

¹ Committee to Protect Journalists, *A Guide to Personal Protective Equipment*, [ppc-glossary_cpj-final.pdf](https://www.cptj.org/wp-content/uploads/2020/05/ppc-glossary_cpj-final.pdf)

The City's Proffered Evidence to Justify the Mask Ban is Contradictory or Unhelpful. The City adopted its ban on masks in 2019. But it mysteriously attempts to justify the need for the ban by pointing to 22 pictures of protesters all wearing masks *after* this adoption. All but one of these pictures is from protests that took place between 2020 and 2022, which is when masking was most prevalent given the COVID pandemic. The one picture from outside this date range captures the ICE Out protest on June 14, 2025. These pictures prove that the mask ban was either ineffectual at preventing people from wearing masks in public or that the ban was never enforced. Even more perplexing: the City has maintained in responses to the ACLU's public record requests and the Civilian Police Review Board that it never arrested anyone pursuant to the mask ban set forth in the Ordinance until June 14, 2025.

For these reasons and for the reasons expressed in our prior letters, the proposed revisions do not save the Ordinance from constitutional attack, and we ask that the Council reconsider tonight's action or face a potential legal challenge.

Sincerely,

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